

**ASSURING COMPLIANCE WITH
STATE REVOLVING FUND PROGRAM REQUIREMENTS**

Region III Procedures

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**Region III
U.S. Environmental Protection Agency
Philadelphia**

ASSURING COMPLIANCE WITH STATE REVOLVING FUND PROGRAM REQUIREMENTS REGION III PROCEDURES

In implementing the Clean Water and Drinking Water State Revolving Fund (CWSRF and DWSRF) programs, states strive to comply with a variety of programmatic requirements which arise from statutory or regulatory provisions or grant conditions. As part of the grant application and grant award document, states assure that they will comply with the various requirements. Upon occasion, problems arise in the implementation of the state programs.

The purpose of this guidance is to identify and formalize steps which Region III may consider and initiate to address compliance issues. While compliance with all programmatic requirements is important, Region III has usually given special attention to compliance with the binding commitment requirement. While the Region will continue to monitor that requirement particularly closely, the compliance assurance measures outlined in this guidance apply to all programmatic requirements.

This guidance focuses on programmatic compliance issues related to management of the CWSRF and DWSRF infrastructure and source water land acquisition loan programs. The Region is developing guidance related to DWSRF set-aside workplan development and reporting. The Region will work with the states to improve performance of activities funded under the set-asides in a manner consistent with the steps outlined in this document.

The programmatic requirements which the Region monitors are shown on the following table.

Requirement	Measurement/Objective
<p>Binding Commitments (BCs) Enter into BCs equal to the amount of the quarterly grant payments and corresponding state match within one year of receiving grant payments.</p> <p>CWSRF: 35.3135(c) DWSRF: 35.3550(e)</p>	<p>Review cumulative BCs quarterly (compare actual BCs to amount needed to comply with requirement). Determine that the state has made satisfactory progress in converting binding commitment letters to closed loans.</p>
<p>State Match (deposit state match into fund consistent with actual Federal cash draws consistent with applicable proportionality ratio)</p> <p>CWSRF: 35.3135(b) DWSRF: 35.3550(g)</p>	<p>On an annual basis, review the timing and amount of state match deposits relative to Federal cash draws.</p>
<p>State 1:1 Match Provide state 1:1 match for the state drinking water program support set-aside</p> <p>DWSRF: 35.3535(d)(2); 35.3550(h)</p>	<p>Compare source and amount of match identified in the respective DWSRF intended use plan with amounts actually provided during the year.</p>
<p>Use all available funds (i.e., “timely and expeditious”)</p> <p>CWSRF: 35.3135(d) DWSRF: 35.3550(l)</p> <p>Account for all funds in Intended Use Plans (IUPs)</p> <p>CWSRF: 35.3150(b)(5) DWSRF: 35.3555(c)(3-4)</p> <p>Use of repayments IUPs demonstrate use of repayments and other funds within one year or submit a plan for their use</p> <p>CWSRF: Memoranda 99-5, 99-9, and 01-3</p>	<p>Annually review the adequacy of reporting of all funds in IUP and inclusion of plans for use of all funds. If applicable, review the status of the state’s negotiated supplemental plan for use of repayments to determine if the state is making progress in reducing the size of the backlog of available repayments.</p> <p>Note that SRF Memorandum 01-3 identifies CWSRF financial indicators and sets a target of 90% for executed loans to total available funds. DWSRF has not yet developed targets, but comparable targets should be available in the near future.</p>
<p>Maintain the financial health of the fund</p> <p>CWSRF: 35.3120(a)(1)(iv); 35.35.3170(a) DWSRF: 35.3550(k); 35.3555(c)(3)(v)</p>	<p>On an annual basis, determine that the state is assuring timely repayment of loans and that the state is exercising appropriate discretion and diligence in entering into loan agreements. Review state’s program for loan monitoring and taking action to reduce risk of defaults and late payments.</p>

Submit annual/biennial reports CWSRF: 35.3135(j) DWSRF: 35.3570(a)	Annually determine that the state submitted its report in a timely manner (no later than 90 days after completion of state fiscal year). Determine that the report is consistent with Regional reporting guidance.
Submit annual IUPs (regardless of capitalization grant application submittal) CWSRF: 35.3150(a) DWSRF: 35.3555(a)	Annually determine the consistency of the IUP with Regional supplemental guidance with respect to sources and uses of funds, project descriptions, goals statements, and financial schedules.
Conduct environmental reviews (compliance with environmental cross-cutting authorities) CWSRF: 35.3145(a-b); 35.3140 DWSRF: 35.3550(o); 35.3575(b&e); 35.3580 (Note: A list of cross-cutting requirements will be included in the final document.)	Periodically review sample project files; review the adequacy of public review process, appropriate use of categorical exclusions, and adequacy of environmental review documents.
Implement six affirmative Disadvantaged Business Enterprise steps CWSRF: 35.3145(d) DWSRF: 35.3575(d) Submit quarterly MBE/WBE procurement activity reports CWSRF: 35.3145(e) DWSRF: not included in DWSRF rule because of pending DBE rule; reporting requirement included in grant condition	Periodically review sample project files. Examine the adequacy of documentation regarding implementation of the six steps. Review documentation to support quarterly accomplishment reporting.
Appropriately use administrative expenses allowance/set-aside and program income, if applicable CWSRF: 35.3120(g); “Fees Charged by States to Recipients of CWSRF Program Assistance” (publication pending) DWSRF: 35.3535(b)	On an annual basis, review cumulative expenditures for program administration and compare to available funding. Review appropriate use of program and non program income. Periodically review sample transactions and documentation to assure that expenditures are allowable and reasonable.

Provide assistance only for eligible purposes and to eligible recipients CWSRF: 35.3115; 35.3120; 35.3150(b); “Guidance for Preparation of Intended Use Plans and Associated Materials” (Region III, October 1998) DWSRF: 35.3520; 35.3525; 35.3555(c); “DWSRF: Supplemental Guidance” (Region III, February 2001)	As part of IUP review, assure that submitted project descriptions are sufficiently detailed to determine intended project purpose and recipient and that all identified projects are appropriate. Periodically review sample project files to assure that projects as actually built were eligible. Examine DWSRF processes to assure that recipients have technical, financial, and management (TFM) capacity. Review sample TFM files.
Provide only allowable types and terms of assistance CWSRF: 35.3120 DWSRF: 35.3525	Periodically review sample project files to determine that types and terms of assistance provided are consistent with program regulations.
Deposit interest earnings and loan repayments into the fund in a timely manner CWSRF: 35.3120(f) DWSRF: 35.3550(f)(3)	Review state accounting records to identify funds which should have been deposited into the SRF account. Compare dates and amounts of deposits into SRF account.
Timely upload data into the national SRF databases CWSRF: grant condition DWSRF: 35.3570(d)(2); grant condition	Assure that annual data is provided in a timely manner and is accurate and complete. If applicable, determine if state resolves identified data errors in a timely manner.
Maintain appropriate accounting and audit practices for both projects and set-aside activities CWSRF: 35.3135(h-i) DWSRF: 35.3550(i)	Annually determine that single audits are provided in a timely manner and that the state has initiated steps to resolve audit findings. Periodically on a sample basis, test transactions to assure appropriate financial recording. Periodically review adequacy of fiscal control/accountability processes.
Submit Financial Status Reports (FSRs) and Federal Cash Transaction Reports (FCTRs) CWSRF: 31.41(b-c) DWSRF: 31.41(b-c)	On an annual basis, determine that FSRs and FCTRs were submitted in a timely manner and that information is complete and accurate.

IDENTIFICATION OF PROGRAM ISSUES

States document their compliance with these requirements in many ways, most frequently in their annual/biennial reports. In addition, compliance with these requirements is a central element of the Region's annual review process. Regional concerns with the states' programs are summarized and appropriate "action items" identified in the Region's Program Evaluation Reports (PERs). Generally speaking, state implementation of the identified recommendations in the PER would resolve outstanding issues. However, if compliance is not achieved within a reasonable timeframe, the Region may need to consider additional measures to assist the state in resolving program issues.

Identification of program issues is not limited to the formal annual review process. Likewise, initiation of steps to assure compliance need not be tied to the traditional schedule of receipt of the annual/biennial report, conduct of the annual review/site visit, and issuance of the draft/final PER. That process may not result in an appropriate response time to potential problems. The Region also encourages states to provide early notification of emerging compliance concerns so that problems can be addressed before they become more difficult to resolve.

COMPLIANCE ASSURANCE MEASURES

CWSRF (40 CFR 35.3170) and DWSRF (40 CFR 35.3585) program regulations outline similar procedures for responding to serious noncompliance issues. These procedures call for issuance of formal notices of noncompliance by the Regional Administrator (RA) and development and implementation of state corrective action plans within prescribed timeframes. Region III feels that many steps can and should be taken prior to issuance of an RA notice of noncompliance. This guidance outlines other actions that the Region may consider prior to issuance of an RA notice of noncompliance.

It is the policy and intent of Region III to seriously address noncompliance with any CWSRF or DWSRF program requirement. Outlined below are a number of actions which the Region may take when the Region becomes aware of compliance issues. Note that the actions reflect a variety of informal and formal measures.

In most cases, the following steps would be taken sequentially:

- Informal Staff Review
- Mid Level Manager Review
- Regional Administrator (RA) Corrective Action Notice

(1) Informal Staff Review

Initially staff at the state and Region would work informally to identify and resolve program issues and problems. Usually this will entail one or more informal conference calls involving appropriate state SRF staff and the appropriate Regional SRF Coordinator and other SRF Team members. Actions may include the following:

- The SRF Coordinator notifies the state (or vice versa) of a potential noncompliance issue, including the nature and extent of the problem (e.g., binding commitments below required amount).
- The state will identify measures it has already taken and will take to remedy the problem. The SRF Coordinator will inform the Regional SRF Team Leader and Branch Chief of program issues and, as appropriate, seek input.
- The SRF Coordinator may request that the state provide documentation regarding the compliance issue, including an action plan for resolution.
- The Region will provide technical assistance to the state if requested in identifying the reasons for noncompliance and possible corrective actions.
- As appropriate, the SRF Coordinator and other Regional staff may meet with state staff to gain further understanding of the issue and provide assistance in identifying possible measures that the state could initiate to resolve the issue.

(2) Mid Level Manager Review

If the issue persists without timely resolution, attention will be directed to a higher level within the Region and state and may include the following actions:

- The Region will initiate a conference call with higher level state management to discuss the issue and measures which the state might take to resolve the issue.
- The Municipal Financial Assistance Branch Chief will send a letter to the state SRF program manager outlining the Region's perspective on the noncompliance issue and expectations regarding how and when it will be corrected.
- As appropriate, the Region (division director) will send a compliance advisory letter to the state outlining the seriousness of the issue and requesting the state to outline a formal action plan to resolve the issue.
- Pending resolution of the issue (following issuance of the compliance advisory letter), the Region may defer award of new capitalization grants.

(3) Regional Administrator (RA) Corrective Action Notice

If the issue remains unresolved for an extended period or escalates in seriousness, the Region will issue a notice of noncompliance:

- If the state does not respond in a timely and appropriate manner to the division compliance advisory letter, the RA will issue a formal notice of noncompliance which outlines the issues and prescribes required state corrective actions. The state must respond to this notice within 60 days. [40 CFR 35.3170(c) for CWSRF and 40 CFR 35.3585(c) for DWSRF]
- Pursuant to the applicable program regulations, if the state does not provide an acceptable corrective action strategy within 60 days of receiving the RA noncompliance notice, the Region will suspend grant payments.
- Once the state takes necessary corrective action, the Region will release withheld payments. The Region will advise the state regarding appropriate changes to payment schedules. (Note that this does not disrupt cash draws from payments that the state has already received.)
- If the state fails to take necessary actions within 12 months of receipt of the RA noncompliance notice, withheld funds will be deobligated and reallocated to other states.

TIMETABLE

Determination of how quickly the Region progresses through the steps could be influenced by:

- Timeliness of the state's response (i.e., work with the states to resolve the issues as soon as possible before the problems become more difficult to resolve).
- The appropriate level of response (resolve at lowest level possible; escalate only when necessary).
- The nature and extent of action commensurate with the significance of the compliance problem (i.e., duration, impact).
- On-going state efforts and cooperation with the Region to resolve the problem (e.g., previous Regional awareness of the problem, open and collaborative communication, previous Regional and state efforts to resolve the problem). In most cases, however, efforts to resolve issues informally at the staff level would not exceed six months.